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SCHWEGMAN, LUNDBERG & WOESSNER/EBAY P.O. BOX 2938 MINNEAPOLIS, MN 55402			EXAMINER NGUYEN, MAIKHANH	
			ART UNIT 2176	PAPER NUMBER
			NOTIFICATION DATE 01/11/2008	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@SLWIP.COM

## Office Action Summary

Application No.

09/589,585

Applicant(s)

PEARSON ET AL.

Examiner

Maikhanh Nguyen

Art Unit

2176

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 19-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 and 19-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

1. This action is responsive to the Appeal Brief filed 10/09/2007.


Claims 1-15 and 19-26 are presented for examination. Claims 1, 13, 19, and 25-26 are independent claims.

In view of the Appeal Brief filed on 10/09/2007, PROSECUTION IS HEREBY REOPENED. A new ground of rejection s set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- a) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below.

  
DOUG HUTTON  
SUPERVISORY PATENT EXAMINER

### Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

*(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.*

*This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).*

3. Claims 1-15 and 19-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Langheinrich et al.** (US 6,654,725, filed 11/1999) in view of **Hess et al.** (US 7007076, issued 02/28/2006, as cited in the IDS, filed 05/18/2006).

#### As to claims 13 and 26:

Langheinrich teaches a computer-readable medium having stored thereon executable instructions for causing a computer (*e.g., client 102*) to perform a utility program (*e.g., a web browser*) for selecting (*e.g., dynamically selected, selection*) images (*e.g., advertisements*) for a markup language document (*e.g., a Web page*) [see col.3, lines 63-65 and see fig.1 and the accompanying text, beginning at col.4, line 3] comprising:

- obtaining a set of random numbers corresponding to the number of image;  
retrieving images from a group of images using the set of random numbers (*e.g., offer only a random selection mechanism...a referenced inline image can be selected as late as the time the actual layout of the page is being made in the user's browser window... advertisements will then be selected randomly; col.1, lines 16-32 & the system chooses a random advertisement; col.8, lines 1-18*); and
- placing the retrieved images in the markup language document (*e.g., customized advertisement selection and delivery on the World Wide Web ... inserts a customized advertisement into the page that matches the page content or search topic; see the Abstract*).

Langheinrich, however, does not specifically teach “*determining a number of images to display in the markup language document.*”

Hess teaches determining a number of images to display in the markup language document (*e.g., the Gallery presentation page format 900 ... by displaying all images in a predetermined, fixed-size display area ... use the item number to generate references ... for the desired thumbnail images; col. 9, line 60- col. 10, line 18*).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Langheinrich with Hess because it would have allowed buyers the ability to

quickly preview items for sale as well as supplying information includes descriptions of items for sale and locations from which images that are to be associated with the items can be retrieved.

**As to claim 15:**

Langheinrich teaches determining a location in the document for each of the retrieved images from an instruction embedded in the document (*e.g., after the user requests a page [1] from the content server 101, the server executes a script that will customize the requested page--for example by searching a database for a list of matching entries for a user query. In the process the publisher's script uses [2] the advertisement server selection API 119 to obtain an advertisement ID for the given customization parameters (for example the search keyword). The API 119 will query [3] to the database server and obtain the relevant information [4] from the database server 104, make a selection based on the customization parameter and return [5] the respective advertisement ID back to the calling script. This advertisement ID information can then be embedded into the HTML image tag that is placed on the results page where the advertisement will be displayed. After returning [6] the results back to the client...The returned data [10] is handed back [11] to the advertisement server 103 and transmitted [12] to the user's web browser 102, where it can then be displayed to the user on the results page) [see col.4, lines 21-58 and col.6, lines 7-63].*

**As to claim 19:**

Refer to the rejection of independent claim 13 above is incorporated herein in full.

Additionally, Langheinrich teaches:

- a processing unit (*e.g., client 102; fig.1*);
- a memory coupled to the processing unit through a system bus (*is inherent to the system of Langheinrich*);
- a computer-readable medium (*is inherent to the system of Langheinrich*) coupled to the processing unit through the system bus; and
- an instruction (*e.g., a script*) embedded in a markup language document (*e.g., a web page*) in the memory to cause the processing unit to execute a utility program (*e.g., a web browser*) from the computer-readable medium.

**As to claim 20:**

Langheinrich teaches the utility program causes the processing unit to place the selected images in a location defined in the instruction (*e.g., the corresponding script simple includes the customization parameters into the HTML image tag and returns the results page to the user's web browser & also see fig. 11*).

**As to claim 21:**

Langheinrich teaches the instruction specifies the number of images to display (*e.g., generates electronic advertisement available to the client system ... a customization*

*process which customizes the electronic advertisements to be delivered to each client system; col.2, lines 50-58).*

**As to claim 22:**

Langheinrich teaches an administration program that causes the processing unit to create a group of images from which to select the number of images (*e.g., the selection process 119 will find the embedded customization parameters to request and perform the selection after obtaining the relevant information from the database server; col.6, lines 37-63).*

**As to claim 23:**

Langheinrich teaches the computer system is a web server (*e.g., the web server in step 1001; col.5, line 19-20*) and the markup language document is a web page (*e.g., web page; col.5, lines 45-46).*

**As to claim 24:**

Langheinrich teaches the web page contains images of items being auctioned on a web site hosted by the web server (*e.g., server which stores advertisements and their campaign information, and an advertisement server which generates electronic advertisements; see Abstract).*



**As to claims 1 and 25:**

Refer to the rejection of independent claim 19 above is incorporated herein in full.

Additionally, Langheinrich teaches selects an image for insertion into the document (*e.g., a dynamically selected advertisement; col.3, lines 63-65*);

**As to claim 2:**

Langheinrich teaches a gallery containing images available for display (*col.2, lines 1-3*).

**As to claim 3:**

Langheinrich teaches choosing the images for the pool from a gallery containing images available for display using an administration tool (*e.g., Once a pool of available advertisements has been filtered out, the advertisement with the highest click-through will be selected; col.2, lines 1-3*).

**As to claim 4:**

Langheinrich teaches obtaining filtering criteria; identifying an image from the gallery based on the filtering criteria (*e.g., Once a pool of available advertisements has been filtered out, the advertisement with the highest click-through will be selected; col.2, lines 1-3*); and adding the identified image to the pool (*e.g., Once a pool of available advertisements has been filtered out, the pool can adding the identified image; col. 2, lines 1-3*).

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**As to claim 5:**

Langheinrich teaches examining information associated with the image against a set of standards and discarding the image if the information does not meet the standards (*e.g., filters out all non-applicable advertisements given the condition of the current request for a banner; col.1, lines 37-41*).

**As to claim 6:**

Langheinrich teaches deleting an image from the pool (*e.g., a pool of available advertisements has been filtered out; col.2, lines 1-3*).

**As to claim 7:**

Langheinrich teaches the markup language document is a web page (*e.g., web page; col.5, lines 45-46*) and the instruction is a tag in a proprietary format (*e.g., an HTML-embedding tag such as ILAYER or IFRAME ... The HTML-embedding tag points to the advertisement server 103 and contains the customization parameters that should be used by the advertisement system. Once the user's browser 102 encounters the embedding tags it will contact [3] the advertisement server 103 to fill in a snippet of HTML code at the position the original tag was placed in the output of the publisher's application; col. 7, lines 1-35*).

**As to claim 8:**

Langheinrich teaches the utility is invoked when the tag in the proprietary format is processed during a compile of the web page format (*e.g., the script that handles requests for an advertisement image ... the script will first decode the parameters that have been passed to the script... The selection process can be shortcut with explicitly requesting a particular advertisement by its advertisement ID ... In case such information has been embedded into the request, the system will call the selection module 1006 to select a customized advertisement for the particular situation ... total page accesses to the publisher's web site the advertisement will be shown on. Once an advertisement id has been determined in step 1003 and the procedure of selection module 1006 has been performed, the system can then call the advertisement data module 115 (FIG. 2) for obtaining the actual image data; col.5, lines 19-61).*

**As to claim 9:**

Langheinrich teaches widget identifier (*e.g. advertisement ID; col. 5, lines 14-15 & col.6, lines 22-25*), number of images (*e.g., specify an arbitrary number of display constraints; col.3, lines 30-36*), display parameters (*e.g., display probabilities for relevant values of the customization parameters; col. 2, lines 64-67*).

**As to claim 10:**

Langheinrich teaches a size parameter and a location parameter (*e.g., customization parameters; col.6, lines 7-67*).

**As to claim 11:**

Langheinrich teaches widget identifier (*e.g. advertisement ID; col. 5, lines 14-15 & col.6, lines 22-25*), category identifier, number of images (*e.g., specify an arbitrary number of display constraints; col.3, lines 30-36*), display parameters (*e.g., display probabilities for relevant values of the customization parameters; col. 2, lines 64-67*).

4. Claims 12 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Langheinrich et al.** in view of **Hess et al.** as applied to 1 and 13 above, and further in view of **McCollom et al.** (U.S. 6,925,444, filed 12/1998).

**As to claim 12:**

McCollom teaches validating the pre-determined number of images against validation criteria (*col.8, lines 51-64*) and substituting a different image for an image that fails the validation (*col.13, lines 38-61*).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine McCollom with Langheinrich as modified by Hess because it would have provided the capability for capturing the statistical information with regard to the merchant advertisement or category advertisement viewed by the consumer.

**As to claim 14:**

Note to the discussion of claim 6 above for rejection.

**Response to Arguments**

5. Applicant's arguments filed 10/09/2007 have been fully considered but they are not persuasive.

a. Applicant argues that *Langheinrich does not teach determining a number of images to display* [Remarks, page 16].

In response, the rejection above shows how the teachings of the newly applied prior art (Hess) meet the claim limitations.

b. Applicant further argues that *Langheinrich does not teach a set of random numbers corresponding to the number of images* [Remarks, page 17].

In response, Langheinrich's teaching "*offer only a random selection mechanism ... a referenced inline image can be selected as late as the time the actual layout of the page is being made in the user's browser window... advertisements will then be selected randomly*" [col.1, lines 16-32] is interpreted as read-on the claimed "obtaining a set of random numbers corresponding to the number of image; retrieving images from a group of images using the set of random numbers".

### **Conclusion**

6. The prior art made of record, listed on PTO 892 provided to Applicant is considered to have relevancy to the claimed invention. Applicant should review each identified reference carefully before responding to this office action to properly advance the case in light of the prior art.

### **Contact information**

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maikhanh Nguyen whose telephone number is (571) 272-4093. The examiner can normally be reached on Monday - Friday from 9:00am – 5:30

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pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doug Hutton can be reached at (571) 272-4137.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MN

  
**WILLIAM BASHORE**  
**PRIMARY EXAMINER**